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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

GREEN, ANTHONY J

ART UNIT PAPER NUMBER

1755

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,960

Applicant(s)

BYTNAR, STEPHEN C.

Examiner

Anthony J. Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-57 is/are pending in the application.
- 4a) Of the above claim(s) 47, 51 and 54-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 46, 48-50, 52 and 53 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment submitted on 29 December 2005. Claims 46-57 are currently pending.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

It is noted that applicant has not responded to this objection and accordingly it is repeated.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 46, 48-50 and 52-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably

convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

As stated previously, the claims added by the preliminary amendment lack literal support (i.e antecedent basis) in the specification as originally filed. For example the amounts and the types of the carbohydrate components (glucose, fructose etc.) and their corresponding molecular weights are not recited in the specification. Also no support for the amount of the acetate component can be seen as well as the amount of the thickener. No mention of sodium acetate is found in the specification. Accordingly the claims as added by preliminary amendment lack support in the specification as originally filed and accordingly they are considered new matter.

Applicant argues that the support lies in the attachment to the provisional application and attempts to show where the support is found for the instant claims, however the examiner fails to specifically see where, in the instant specification or the attachment to the provisional specification, literal support is found for all of the claim limitations recited in the instant claims. For instance, it is not seen as to where the support is found for a molecular weight range of about 180 to 1500. While support can be seen for the lower limit of 180 it is not seen as to where the support lies for the upper limit of 1500 as none of the examples shown recite this upper limit. Also, it is not seen as to where the support lies for the amounts of each of the components. Applicant is required to show exactly where literal support is found for each of the claims added by preliminary amendment as the examiner fails to see literal support for all of the claimed limitations. Further according to **MPEP 2163.05 [R-2] Changes to the Scope of**

Claims: "The failure to meet the written description requirement of 35 U.S.C. 112, first paragraph, commonly arises when the claims are changed after filing to either broaden or narrow the breadth of the claim limitations, or to alter a numerical range limitation or to use claim language which is not synonymous with the terminology used in the original disclosure. To comply with the written description requirement of 35 U.S.C. 112, para. 1, or to be entitled to an earlier priority date or filing date under 35 U.S.C. 119, 120, or 365(c), each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure. See MPEP § 2163 for examination guidelines pertaining to the written description requirement.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

NOTE: Since applicant has failed to properly show support for the claimed subject matter they are not entitled to the date of their provisional application and accordingly the previously made art rejections are still seen to apply and are repeated below:

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6. Claims 46, 48-50 and 52-53 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hartley et al (US Patent No. 6,436,310).

The instant claims are clearly taught by the claims of the reference.

7. Claims 46, 48-50, and 52-53 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hartley et al (US Patent No. 6,599,440).

The reference teaches, in claims 11-13, a composition that encompasses that which is instantly claimed. It should be noted that applicant's use of the term "comprising" opens the claim to the addition of other components and therefore the instant claims are taught by the reference.

8. Claims rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hartley et al (US Patent No. 6,440,325).

The reference teaches, in claims 12, 14, 18 and 20, a composition that encompasses that which is instantly claimed. It should be noted that applicant's use of the term "comprising" opens the claim to the addition of other components and therefore the instant claims are taught by the reference.

9. Claims 46, 48-50 and 52-53 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hartley et al (US Patent Application Publication No. 2003/0209690).

The reference teaches, in claims 10-12, a composition that encompasses that which is instantly claimed. It should be noted that applicant's use of the term "comprising" opens

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the claim to the addition of other components and therefore the instant claims are taught by the reference.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony J. Green
Primary Examiner
Art Unit 1755

ajg
December 4, 2006